HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.1467 of 2005

Between:

Cuddapah District Co-operative
Central Bank Limited, Cuddapah,
Rep., by its General Manager.

... Appellant

AND

M. Dastagiri Reddy and four others.

... Respondents

; JUDGMENT :

Counsel for the appellant : Smt. Kavitha Gottipati

Counsel for respondent Nos.1 to 4: Sri V. Srinivas

Dated: 29th September, 2007

Per C.V.NAGARJUNA REDDY, J.

This appeal is filed against judgment dated 03.08.2004 passed by the learned Single Judge whereby he allowed Writ Petition No.9210 of 1998 filed by respondent Nos.1 to 4 and directed their reinstatement with continuity of service, 50% of backwages and full attendant benefits.

Respondent Nos.1 to 3 were working as Typists and respondent No.4 as an Attender in the appellant-Bank having been appointed in 1989, 1985, 1989 and 1995 respectively. They initially entered the service of the appellant-Bank as daily wage workers and their services were regularized through resolution No.17 dated 25.09.1994 passed by the Board of Directors of the appellant-Bank and consequential proceedings issued on 08.10.1994. A writ petition filed challenging their regularization is pending in this Court and for the present purpose that has no relevance.

On 26.03.1998, separate orders were issued by the General Manager of the appellant-Bank whereunder the services of respondent Nos.1 to 4 were terminated with effect from 31.03.1998. Questioning these orders, respondent Nos.1 to 4 filed Writ Petition No.9210 of 1998 which, as stated above, was allowed by the learned Single Judge. The appellant filed the present writ appeal against the said order.

Smt. Kavitha Gottipati, learned counsel for the appellant submitted that the learned Single Judge committed a serious error in entertaining the writ petition ignoring the availability of alternative remedy for respondent Nos.1 to 4 to approach the Labour Court under

Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, 'the Act'). She also contended that the finding of the learned Single Judge that retrenchment was in violation of Section 25-F of the Act suffers from a patent error.

Sri V. Srinivas, learned counsel for respondent Nos.1 to 4 sought to support the judgment of the learned Single Judge by contending that the finding of the learned Single Judge that the appellant failed to pay the retrenchment compensation at the time of termination of the services of respondent Nos.1 to 4 is based on the appellant's own admission contained in its counter-affidavit filed in the writ petition. He also submitted that Section 25-F of the Act as interpreted by the Supreme Court in several judgments including the judgment in **Pramod Jha v. State of Bihar**[1] mandates that the employer is liable to pay the retrenchment compensation at the time of retrenchment and that therefore the admitted failure of the appellant to pay the compensation on or before 31.03.1998, the date with effect from which retrenchment was made, rendered termination wholly illegal and that the learned Single Judge was justified in directing the reinstatement of respondent Nos.1 to 4. He also submitted that availability of an alternative remedy is not an absolute bar for maintaining a writ petition.

We have carefully considered the rival submissions of the learned counsel.

In the judgment under appeal, the learned Single Judge noted the admission made by the appellant in its counter-affidavit to the effect that though the retrenchment was effected on 31.03.1998, compensation was paid through demand drafts dated 15.04.1998.

This finding of the learned Single Judge is not questioned in this writ appeal. Thus, the established fact remains that as on the date of retrenchment, compensation was not paid.

The learned Single Judge in setting aside the retrenchment orders relied upon the judgment in **Pramod Jha (1 supra)** wherein it was held that payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment. Thus, the judgment of the learned Single Judge is in conformity with the law laid down by the Supreme Court and therefore it does not call for any interference while exercising our Letter's Patent jurisdiction.

As regards the contention of the learned counsel for the appellant relating to the entertainment of the writ petition filed bypassing the alternative remedy, we are of the considered view that ordinarily a writ petition is not entertained when an effective alternative remedy is available to an aggrieved party. We are further of the view that Section 2-A(2) is certainly an effective alternative remedy. But the question is whether respondents 1 to 4 should be non-suited on this ground at this stage? In our view, the answer should be in the negative for the following reasons:

1) In **Whirlpool Corporation v. Registrar of Trade Marks**[2] the Supreme Court held that in at least 3 contingencies, namely; where the writ petition is filed for enforcement of any Fundamental Rights or where there has been a violation of the principles of natural justice or

where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged, High Courts could entertain writ petitions under Article 226 of the Constitution of India, ignoring the availability of alternative remedy for the aggrieved party.

2) In **Harbans Lal Sahnia v. Indian Oil Corporation Limited**[3] the Supreme Court while reiterating the aforementioned principles held that the rule of exclusion of writ jurisdiction on the ground of availability of alternative remedy is a rule of discretion and not one of compulsion.

3) In **ABC International Limited v. Export Credit Guarantee Corporation of India Limited**[4] the Supreme Court held that while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and not limited by any other provisions of the Constitution and that the High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition.

4) In **U.P. State Spinning Company Limited v. R.S.Pandey and another**[5] the Supreme Court held that where the proceedings itself are an abuse of process of law and where it is shown that it is a case of palpable injustice to the petitioner to force him to adopt the

remedies provided by the statute, the High Court in an appropriate case can entertain a writ petition.

In the instant case, the writ petition was filed in the year 1998 and disposed of after six years. The retrenchment of respondent Nos.1 to 4 is undoubtedly in flagrant violation of the mandatory statutory provisions contained in Section 25-F of the Act and therefore the orders impugned in the writ petition were patently illegal. If the writ petition was to be dismissed by relegating respondent Nos.1 to 4 to the alternative remedy after a lapse of six years from the date of their termination, it would have certainly resulted in palpable injustice to them. Therefore, in our view, the learned Single Judge has exercised sound discretion in choosing to dispose of the writ petition on merits instead of non-suiting respondent Nos.1 to 4 on the ground of availability of alternative remedy. Thus, we are satisfied that the facts and circumstances of the case warranted adjudication of the writ petition on merits and we do not, therefore, see any patent illegality in the judgment of the learned Single Judge. We are also of the view that the learned Single Judge balanced the interests of both the parties by denying the backwages to respondent Nos.1 to 4 to the extent of 50% though he found that retrenchment is patently contrary to the provisions of Section 25-F of the Act and the law laid down by the Supreme Court.

For the aforementioned reasons, we are not inclined to interfere with the judgment under appeal and the writ appeal is accordingly dismissed.

As a sequel to dismissal of the writ appeal, WAMP.No.1359 of 2007 filed by the appellant for interim relief is also dismissed.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 20-09-2007.
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[1] (2003) 4 SCC 619
[2] (1998(8 SCC 1
[3] (2003) 2 SCC 107
[4] (2004) 3 SCC 553
[5] (2005) 8 SCC 264